No. 97-1882

In The

Supreme Court of the United States

October Term, 1997

FELICIANO LEJANO and MELINDA LEJANO,

Petitioners,

vs.

K.S. BANDAK, ASSURANCEFORENINGEN GARD and K.S. BANDAK II,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of the State of Louisiana

RESPONDENTS' BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDING

The petition accurately list the parties to the proceeding.

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Respondents KS Bandak, Assuranceforeningen GARD, and KS Bandak II, respectfully request that this Court deny the petition for writ of certiorari submitted by Petitioners Feliciano Lejano and Melinda Lejano.

STATEMENT OF THE CASE

Respondents do not agree fully with Petitioners' Statement of the Case. Material differences with respect to consideration of this writ petition include the following:

1. The forum selection clauses about which petitioners complain were repeated in four separate documents applicable to this seaman's employment. Two individual employment contracts (one required by and on a form supplied by the Philippine Overseas Employment Administration (the "POEA"), an agency of the Philippine government, and another on a Norwegian form) directly stated that jurisdiction over all disputes was to be either before Philippine authorities or in Norway. Both individual contracts were actually signed by Petitioner, a veteran seaman.

   Additionally, the POEA has a Standard Employment Contract,[1] applicable to all Filipino seamen serving on foreign flag vessels, which contract was specifically incorporated by reference in the individual POEA contract the petitioner signed. This POEA revised Standard Employment Contract had similar and consistent forum selection clauses, requiring all disputes to be brought before the appropriate authorities in the Philippines.

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1. The full title of the contract is the Revised Standard Employment Contract Governing the Employment of All Filipino Seamen on Board Ocean-going Vessels.

Furthermore, Petitioner was a member of the Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP) and as a member of that collective bargaining unit his employment relationship was governed by a collective bargaining agreement. This collective bargaining agreement was negotiated with and approved by the ASO (the Norwegian Shipping and Offshore Federation), the POEA, and AMOSUP. Forum selection clauses in that collective bargaining agreement similarly required the resolution of any disputes either in Norway or in the Philippines.

Finally, each of the four employment documents (the two individual contracts of employment, the incorporated Revised Standard Employment Contract, and the ASO-AMOSUP collective bargaining agreement) required the application either of Norwegian law or of Philippine law to any disputes arising out of the employment contract. Norwegian law requires the resolution of the dispute either in Norway or in the Philippines. Philippine law requires that the Philippine government, through its agency (the POEA, or its successor, the National Labor Relations Commission (NLRC)), have exclusive jurisdiction over such disputes.

2. In the Court's original opinion of August 3, 1994, it found that there were not sufficient contacts with the United States for application of U.S. law to this case. The Court further found that Louisiana had no material interest in the cause of action and that plaintiff should pursue claims in the proper forum, either Norway or the Philippines. *Appendix to Petitioners' Brief*, pp. 37-38.

3. The Judgment and Opinion dated September 21, 1995 again found that the general maritime law of the United

States and the Jones Act did not apply to this case and that either under the law of Norway or the Philippines the forum selection clauses and choice of law provisions contained in the contracts were binding and enforceable. *Appendix to Petitioners' Brief*, pp. 49-50.

4. Petitioners' claim that defendants were not parties to the agreements is a factual matter that was raised earlier and decided adversely to them. The individual contracts were executed for defendants by manning agents (here Barber Shipmanagement Ltd.) acting on behalf of the shipowner, as is customary in the Philippines. The POEA standard employment contract was drafted by the POEA, and incorporated by reference. The NIS collective bargaining agreement was negotiated and signed by the association representing various Norwegian shipowners, but the testimony presented to the court confirmed that the MV BANDAK was a NIS vessel and was enlisted in the ASO. As a result, The MV BANDAK and her owners were included and covered by the collective bargaining agreement.

5. While the statute of limitation has run on Mr. Lejano's claim in Norway, it is due to Petitioners' own failure to bring his claim there. He was specifically invited to do so by defendants in writing, through his lawyer, before the 3 year statutory period for claims in Norway had run. See attached *Appendix to Respondents' Brief*, pp. 7a. Respondents in any event have agreed to waive the defense of prescription in Norway or the Philippines, and are bound to do so. The evidence before the trial Court was that such a waiver is effective.

SUMMARY OF THE ARGUMENT FOR DENYING THE WRIT

This was a foreign maritime employment contract interpreted by a state court. Petitioners urge that the state court should have viewed one of the terms of the employment contract through the prism of state law. As this is a maritime contract, it would have been improper and erroneous to apply state law to the provisions of this contract. In any event, even had the court applied Louisiana law, the contract was enforceable, as Louisiana law enforces reasonable forum selection clauses.

The dispute is entirely foreign. A Filipino seaman was injured in international waters while serving aboard a Norwegian flag ship owned by a Norwegian partnership, composed of Norwegian entities. The specific terms of the contract of employment required the application of Norwegian law, or alternatively Philippine law. An applicable collective bargaining agreement also required the application of Norwegian or Philippine law to any dispute arising out of the employment.

There is no prohibition under maritime law against the application of a forum selection clause requiring resolution of disputes either in the seaman's home country or in the shipowner's country, at the seaman's choice, especially when the applicable law clearly enforces such contracts. The laws of both the Philippines and Norway not only allow the enforcement of these forum selection clauses, they require them.

The contracts were negotiated and approved by an arm of the Philippine government. Norwegian law requires the forum selection clause for seamen on NIS vessels. A collective bargaining agreement between a large Philippine union and an organization representing Norwegian shipowners also included

the forum selection clause. To intrude upon these collective bargaining agreements and the contracts required and/or specifically negotiated or drafted by the POEA would be violative of the comity due other nations and contrary to the Act of State doctrine.

The decision of the trial court, affirmed by the appellate court, and affirmed by the Louisiana Supreme Court, to honor the contracts and laws of those countries having a legitimate interest in the dispute was correct and requires no review.

REASONS FOR DENYING THE WRIT

I.

THIS MARITIME EMPLOYMENT CONTRACT, WITH THE INCORPORATED POEA REVISED STANDARD EMPLOYMENT CONTRACT AND THE AMOSUP COLLECTIVE BARGAINING AGREEMENT, PROPERLY WAS ENFORCED IN ACCORDANCE WITH MARITIME LAW; BUT EVEN HAD THE COURT APPLIED LOUISIANA LAW, THE CONTRACT WAS ENFORCEABLE.

Petitioners urge that the Louisiana Supreme Court erred in applying maritime law to this contract between a shipowner and a seaman. A contract for employment aboard a ship falls within the admiralty jurisdiction, and should therefore be interpreted according to maritime law. *Kossick v. United Fruit Company*, 365 U.S. 731, 735 (1961). A particular clause of a maritime employment contract cannot be plucked from it, and given a separate, isolated interpretation under a different law, without damage to the integrity of the contract and damage to the inherent need in admiralty for uniformity. Furthermore, with respect to the collective bargaining agreement and the revised

Standard Employment Contract involved in this case, there are additional reasons why maritime law, either that of Norway or of the Philippines, should apply.[2]

Regardless of the above, a forum selection clause is enforceable under Louisiana law in any event. The Louisiana Supreme Court noted with approval the enforcement of such forum selection clauses in *Prado v. Sloman Neptun Schiffharts, A.G.*, 611 So. 2d 691 (La. App. 4th Cir. 1992), *writ denied*, 613 So. 2d 986 (La. 1993), and *Barcelona v. Sea Victory Maritime, Inc.*, 619 So. 2d 741 (La. App. 4th Cir. 1993), *writ denied*, 626 So. 2d 1179. (*See Appendix to Petitioners' Brief*, p. 26). Additionally, the Louisiana Court of Appeal, Fourth and Fifth Circuits, have ruled in other contexts that forum selection clauses were favored and enforceable under Louisiana jurisprudence. The Louisiana Fifth Circuit's opinion in the instant case remarked upon this fact:

> We note that jurisprudence from our state courts *support* a presumption of validity to a forum selection clause. This court has held that forum selection clauses are legal and binding. A plaintiff trying to set aside such a clause has a heavy burden. *Digital Enterprises, Inc. v. Arch Telecom., Inc.*, 95-30 (La. App. 5 Cir. 6/28/95), 658 So.2d 20.
>
> In *Calzavara v. Biehl Co.*, 181 So.2d 809, 810 (La. App. 4th Cir. 1966), the court noted that the forum selection provision will be enforced *unless* it is

2. Considerations of comity require that U.S. courts refrain from rushing in to interfere with foreign collective bargaining agreements applicable to foreign seamen on other nation's vessels. Further, special deference should be given to a country's regulation of its own citizens, and a country's regulatory decisions as to whether contractual provisions for its own citizens are reasonable. *See infra* at pp. 12-13.

> *unreasonable*, and the test of reasonableness principally is concerned with the nationality of the parties involved and the accessibility to them of the court given exclusive jurisdiction by the provision. *See Appendix to Petitioners' Brief*, pp. 65-66.

Consequently, plaintiff's initial argument that Louisiana "procedural" law should apply to the forum selection clause in this employment contract instead of maritime law, even were it correct, is irrelevant, because the forum selection clauses, already found to be reasonable, were enforceable under Louisiana law as well as under maritime law.

II.

MARITIME LAW DOES NOT PROHIBIT THE ENFORCEMENT OF A FORUM SELECTION CLAUSE REQUIRING RESOLUTION OF DISPUTES EITHER IN THE SEAMAN'S HOME COUNTRY OR IN THE SHIPOWNER'S COUNTRY, AT THE SEAMAN'S CHOICE.

The accident upon which this suit is based happened in international waters to a Filipino seaman serving on a Norwegian flag ship owned and operated by Norwegian entities. In the trial court's original opinion of August 3, 1994, it reviewed the choice of law criteria set forth in *Lauritzen v. Larsen*, 345 U.S. 571 (1953), and found that there were not sufficient contacts with the United States for application of U.S. law to this case. *Appendix to Petitioners' Brief*, pp. 37. The Court further found that Louisiana had no material interest in the cause of action and that plaintiff should pursue claims in the proper forum, either Norway or the Phillippines. *Appendix to Petitioners' Brief*, pp. 37-38.

An accident on a vessel is presumed to be within the territory of the vessel's flag, and so the application of Norwegian law to this incident is perfectly appropriate. Further, the employment contracts and collective bargaining agreements required the application either of Norwegian law or Philippine law to the dispute, an arrangement that is "natural and compatible with the policy of the law." *Lauritzen v. Larsen*, 345 U.S. 571, 589 (1953).

Petitioners' suggestion that F.E.L.A. or Jones Act considerations should be applied to this dispute between foreigners that occurred on a foreign flag ship simply because the ship's most recent port of call had been in the United States, or because the seaman was flown to the United States for interim medical treatment, is without any legal basis. The trial court held that U.S. law did not apply. This finding of the trial court was affirmed at each step of the proceeding, through the Louisiana Court of Appeal and the Louisiana Supreme Court. There is no basis for the petitioner to suggest the court should apply U.S. law when the determination has correctly been made that U.S. law does not apply to this dispute. Clearly, it was never the intent of Congress that the F.E.L.A. or the Jones Act should apply to cases that had no U.S. involvement. *See New York Cent. R. Co. v. Chisholm*, 268 U.S. 29 (1925); *Lauritzen v. Larsen*, 345 U.S. 571 (1953).

Petitioners' further suggestion that the forum selection clause is a violation of the seaman's right to recovery is also contrary to the policy set by this court in repeated cases since 1972 interpreting forum selection clauses. *M/S BREMEN v. Zapata Offshore Co.*, 407 U.S. 1, 32 L. Ed. 2d 513 (1972); *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 594-5, 113 L. Ed. 2d 622, 632 (1991); *Vimar Seguros y Reaseguros, S.A. v. M/V SKY REEFER, et al.*, 515 U.S. 528, 132 L. Ed. 2d 462 (1995). The courts no longer hold such clauses invalid as "ousting the

jurisdiction of the court."[3] Rather, they are recognized as efficient means to increase certainty and predictability, and to promote the speedy and efficient resolution of disputes by ending litigation over the forum in which a claim can be brought.[4] As a consequence, the public policy of the general maritime law strongly favors such contracts — it does not disfavor them at all. Petitioners' suggestion that this court should completely reverse the burden of proof and find such clauses presumptively invalid is without support. It is contrary to this court's last twenty-five years of jurisprudence on the issue,[5] and is directly contrary to the Act of State doctrine's requirement that the acts of a foreign sovereign are presumed legitimate, especially with regard to its own citizens.

The United States Court of Appeal for the Fifth Circuit recently spoke directly to the enforceability of the POEA forum selection clauses. In *Marinechance Shipping, Ltd. v. Sebastian et al.*, 143 F.3d 216 (5th Cir. 1998), in which forum selection clauses almost identical to the ones here were enforced, Judge Wisdom stated:

> The similarities between the present case and *Carnival Cruise Lines* are many. The contracts of employment for seamen aboard international vessels

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3. This theory, urged by the petitioners' counsel, was specifically rejected in *M/S BREMEN v. Zapata Offshore Co.*, 407 U.S. 1,10, 32 L. Ed. 2d 513, 520 (1972).

4. The litigation over the forum in this case has lasted 5 years. The law in the Philippines requires that there be a decision on any disputes submitted to the NLRC within 90 days.

5. The only post-*Bremen* case cited with regard to this point by petitioner is *Parks v. Dowell Div. of Dow Chemical Corp.* 712 F.2d 154 (5th Cir. 1983), a case which did not rule on forum selection clauses.

> are routine; the seaman individually do not have much bargaining power. The selection of a forum in advance reduces the vessel owner's exposure to suits in forums all over the world. Furthermore, it informs the seamen of where their causes of action can be maintained. Where this case departs from *Carnival Cruise Lines* is that the forum selection clause was imposed by an arm of the Philippine government rather than by either party. This distinction does not alter the fact that the forum selection clause is fundamentally fair. We find, then, that the forum selection clauses in the seamen's contracts are enforceable. (Footnotes omitted)

III.

THE LAWS OF NORWAY AND THE PHILIPPINES BOTH REQUIRE SUCH FORUM SELECTION CLAUSES, AND THE LOUISIANA COURTS PROPERLY DECLINED PETITIONERS' CHALLENGE TO THE VALIDITY OF THE FORUM SELECTION CLAUSES REQUIRED AND/OR SPECIFICALLY APPROVED BY THE NORWEGIAN AND/OR PHILIPPINE GOVERNMENTS FOR FILIPINO SEAMEN SERVING ABOARD NORWEGIAN FLAG VESSELS.

The law of Norway mandates that a seaman's claim against a shipowner be pursued in the Norwegian courts, except for claims under the NIS Act, which may be filed alternatively in the seaman's domicile. The Norwegian law requiring seamen on Norwegian flag vessels to seek redress only before Norwegian authorities, or in their domicile, is specific and is an integral part of the pervasive Norwegian scheme for the regulation of seamen serving on Norwegian flagged vessels:

> If, while the ship is in a foreign country, a dispute arises between the master and any of the crew regarding the settlement of wages, the ship service or the employment relationship in general, the case shall be referred to a Norwegian foreign service station. The dispute shall not be brought before foreign authorities. As regards lawsuits against the shipping company relating to compensation for occupational injuries, they may *only* be brought before a court of justice in Norway. *Section 50, Seaman's Act of 30 May 1975 No. 18 [Norway].* (Emphasis added).

> Individual contracts of engagement for service on ships in this register *shall* expressly state that the contract is subject to Norwegian laws and Norwegian courts, but that cases concerning the employee's service on the ship may be brought against the owner before a Norwegian court or before a court in the employee's country of residence. *Chapter II, Section 6, Act of 12 June 1987 No. 48 relating to a Norwegian International Ship Register [Norway].* (Emphasis added).

Petitioner's assertion that these forum selection clauses are not valid under Norwegian law is completely and utterly contrary to the explicit and express statutes of Norway.[6]

A similar situation exists with respect to Philippine law, except the regulatory scheme in the Philippines is even more comprehensive. At the time of Mr. Lejano's employment and at the time of his accident, the Philippine Overseas Employment

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6. The Lugano convention to which Petitioners refer requires jurisdiction either in the country of the employer, the country through which the employment was secured, or the locus of the tort: in this case, Norway, the Philippines, and Norway (the flag of the ship), respectively.

Administration (POEA), an agency of the Philippine government, was charged with the exclusive jurisdiction to regulate and oversee the overseas employment of Filipino seamen. The POEA established the minimum compensation owed by an employer for the injury or death of a Filipino seaman. Philippine law did and still requires that its agencies (the POEA and now its successor, the NLRC (National Labor Relations Commission)) have exclusive jurisdiction over such disputes.[7]

The POEA in its official capacity specified the form of the individual contract which the seaman was required to execute, and was the arm of the Philippine Department of Labor that drafted the Revised Standard Employment Contract Governing the Employment of All Filipino Seamen on Board Ocean-going Vessels. The Revised Standard Contract, specifically incorporated in the individual POEA contract signed by Mr. Lejano, states:

> The Philippine Overseas Employment Administration (POEA or Administration) shall have original and exclusive jurisdiction over any and all disputes or controversies arising out of or by virtue of this contract.

The Act of State doctrine requires that the acts of the POEA be presumed legitimate as an act of a foreign state. *Banco Nationale de Cuba v. Sabbatino*, 376 U.S. 398, 416, 11 L. Ed. 2d 804, 816, 84 S. Ct. 923 (1964). Even if the defendant is a private party, not an instrumentality of a foreign state, and even if the suit is not based specially on a sovereign act, the Act of State doctrine still requires the court to refrain from deciding the "merits of the case" if to do so would cause the court to rule upon the validity of the public acts of a sovereign state

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7. *Appendix to Respondents' Brief*, pp. 2a-5a.

performed within its own territory. *Callejo v. Vancomer, S.A.*, 764 F.2d 1101, 1113 (5th Cir. 1985). In this case, any attack on the validity of the forum selection clauses must fail because they are the clauses required and/or approved by the Philippine government for its own citizens who desire to sail for overseas employers. *See, e.g., Tismo v. M\V IPPOLYTOS*, 776 F. Supp. 928 (D.N.J. 1991), *aff'd*, 947 F.2d 937 (4th Cir. 1992).

The ASO-AMOSUP collective bargaining agreement (also referred to as the "NIS CBA") was the result of an extensive negotiating process, involving representatives of the largest seaman's union of the Philippines (AMOSUP), representatives of the Norwegian shipowners (ASO), representatives of the POEA, and representatives of other Norwegian unions. Part of the negotiations were specifically directed to the forum selection clauses.

The Louisiana state courts properly refused to intrude in the labor/management relationships prescribed by the collective bargaining agreement applicable to Filipino seaman serving on Norwegian flag ships for Norwegian shipowners. In *McCulloch v. Sociedad Nacional*, 372 U.S. 10 (1963), this Court recognized the inherent problems with such an intrusion:

> [T]o follow such a suggested procedure to the ultimate might require that the Board inquire into the internal discipline and order of all foreign vessels calling at American ports. Such activity would raise considerable disturbance not only in the field of maritime law but in our international relations as well. In addition, enforcement of Board orders would project the courts into application of the sanctions of the Act to foreign-flag ships on a purely ad hoc weighing of contacts basis. This would inevitably lead to embarrassment in foreign affairs and be entirely infeasible in actual practice.

Finally, Petitioners' assertions about not understanding the employment documents are to no avail. He was a veteran seaman and was executing documents prepared by his own government and in a language they had chosen and approved.[8] Even were U.S. law to apply, a member of a collective bargaining unit is not free to negotiate terms contrary to the collective bargaining agreement, and his claimed ignorance of the collective bargaining agreement does not allow him to avoid its provisions.

CONCLUSION

There could hardly be a forum selection clause more reasonable or practical than one choosing as the required forum either the seaman's home country or, at the seaman's option, the shipowner's country. This is particularly so when the forum selection clause is required by the seaman's own country, and is required by the law of the ship's flag. The Louisiana courts properly declined to intrude upon a dispute resolution procedure fairly set up by the parties and countries that have a real and legitimate interest in the dispute.

Forum selection clauses are strongly favored because they generally avoid the expensive and protracted litigation over forums not otherwise specified. They provide certainty in international affairs. The forum selection clauses in this case are reasonable under any standard and it was proper for them to be enforced. There is no need for this Court's review.

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8. *Appendix to Petitioner's Brief*, p. 22.

Respectfully submitted,

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APPENDIX

APPENDIX

THE NORWEGIAN SEAMAN'S ACT OF 30 MAY 1975

§1

This Act applies to any person who is employed on board a Norwegian ship, and who does not only work on board while the ship is in port.

. . .

§50

If, while the ship is in a foreign country, a dispute arises between the master and any of the crew regarding the settlement of wages, the ship service or the employment relationship in general, the case shall be referred to a Norwegian foreign service station. The dispute shall not be brought before foreign authorities. As regards lawsuits against the shipping company relating to compensation for occupational injuries, they may only be brought before a court of justice in Norway . . .

NORWEGIAN INTERNATIONAL SHIPREGISTER (NIS) ACT,

Act of 12 June 1987 No. 48.

Chapter II

Special provisions relating to ships in the Norwegian International Ship Register

Section 6 *Pay and working conditions*

Terms of pay and employment and other working conditions on ships in this register are to be fixed in a collective

wage agreement which expressly states that it applies to such service. A collective wage agreement which does not so state does not apply to service on ships in this register.

Collective wage agreements may be concluded with Norwegian or foreign trade unions.

The collective wage agreement mentioned in the first paragraph shall expressly state that the agreement is subject to Norwegian laws and Norwegian courts of law. The parties to the agreement may nevertheless deviate from the provisions in subsections 2 and 33 of Section 5 and Chapter 2-5 of Act no. 1 of 5 May 1927 relating to labor disputes, if the agreement instead of referring to Norwegian courts explicitly provides that disputes concerning the agreement shall be subject to the courts and procedural rules including rules governing arbitration, in another country.

Individual contracts of engagement for service on ships in this register shall expressly state that the contract is subject to Norwegian law and Norwegian courts, but that cases concerning the employee's service on the ship may be brought against the owner before a Norwegian court or before a court in the employee's country of residence.

EXECUTIVE ORDER NO. 247, REORGANIZATION ACT OF THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION [REPUBLIC OF THE PHILIPPINES].

Section 3. *Powers and Functions.* In the pursuit of its mandate, the [Philippine Overseas Employment] Administration shall have the following powers and functions:

(b) Formulate and implement, in coordination with appropriate entities concerned, when necessary, a system for promoting and monitoring the overseas employment of Filipino workers taking into consideration their welfare and the domestic manpower requirements;

(c) Exercise original and exclusive jurisdiction to hear and decide all claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas employment including the disciplinary cases. . . .

SECTION 1, RULE I, BOOK VI OF THE POEA RULES AND REGULATIONS

[The POEA has] original and exclusive jurisdiction to hear and decide all cases involving employer-employee relations arising out of or by virtue of any law or contract involving Philippine workers for overseas employment, including seamen, such as but not limited to . . . money claims of workers against their employers . . . and claims for death, disability and other benefits arising out of employment.

Appendix

Philippine Overseas Employment Administration
Department of Labor and Employment

REVISED STANDARD EMPLOYMENT CONTRACT GOVERNING THE EMPLOYMENT OF ALL FILIPINO SEAMEN ON BOARD OCEAN-GOING VESSELS.

This Revised Standard Employment Contract Governing the Employment of All Filipino Seamen on Board Ocean-going Vessels has been adopted and approved upon the recommendation of a tripartite technical working group and the Seafarer's Consultative Committee following a series of discussions among representatives of manning associations, seamen's organizations, POEA and other government agencies. This contract shall take effect ninety (90) days after this publication.

The terms and conditions provided in this revised employment contract are the minimum requirements acceptable to POEA for the employment of a Filipino seaman overseas. The parties may therefore improve on these minimum terms and conditions but such improvements shall be made in writing and appended to this contract when submitted to POEA for processing and approval.

. . . .

Section I
Jurisdiction

The Philippine Overseas Employment Administration (POEA or Administration) shall have original and exclusive jurisdiction over any and all disputes or controversies arising out of or by virtue of this contract.

Appendix

Section J
Applicable Law

It is understood and agreed that:

All rights and obligations of the parties to this Contract including the annexes thereof, shall be governed by the laws of the Republic of the Philippines, international conventions, treaties and covenants wherein the Philippines is a signatory.

MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995, REPUBLIC OF THE PHILIPPINES, REPUBLIC ACT NO. 8042.

Section 10
Money Claims.

Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages.

Appendix

COLLECTIVE BARGAINING AGREEMENT

FOR

FILIPINO RADIO OFFICERS CHIEF STEWARDS, ELECTRICIANS AND RATINGS

BETWEEN

THE NORWEGIAN SHIPPING AND OFFSHORE FEDERATION (ASO)

AND

THE ASSOCIATED MARINE OFFICERS' AND SEAMAN'S UNION OF THE PHILIPPINES (AMOSUP) NORWEGIAN'S SEAMEN'S UNION

Article 15
Jurisdiction

The Unions and the ASO have observed that according to the NIS ACT this agreement should be subjected to Norwegian law and the jurisdiction of the courts in Norway.

Cases concerning the seafarer's service on the ship may be brought against the Company before a Norwegian court or before a Court in the seafarer's country of residence.

Appendix

LETTER OF OCTOBER 19, 1994 TO ATTORNEY FOR MR. LEJANO

AS BORGESTAD SHIPPING
Address:
P. O. Box 1093
N-3902 Porsgrunn

Phone:
+47 35 50 10 00

Richard J. Dodson
c/o Dodson & Vidrine
625 North Boulevard
Baton Rouge
LA 70802
USA

Your ref.:	Our ref.:	Date:
	SS/KAH	October 1994

Dear Mr. Dodson:

As you know, it has been and continues to be our position that Mr. Lejano may proceed with any claims he might have against K/S Bandak or A/S Borgestad Shipping in Norway, or in the appropriate tribunal in the Philippines.

The three year anniversary date of the accident is approaching. With the court in Louisiana having ruled against your attempted assertion of jurisdiction, we again invite Mr. Lejano to proceed in Norway or the Philippines with any claims that Mr. Lejano may have against the shipowners.

Let us assure you that we will appear in any litigation timely filed by Mr. Lejano in Norway or the Philippines, as is our obligation under Norwegian law, and we can also assure you

that we will proceed in a most expeditious manner to try to resolve any properly filed claim of Mr. Lejano in Norway or the Philippines.

Sincerely,
A/S BORGESTAD SHIPPING
K/S BANDAK

/s/ Sverre Stavseth